



PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of

John BRASSIL et al.

Group Art Unit: 1651

Application No.: 10/768,167

Examiner: S. SAUCIER

Filed: February 2, 2004

Docket No.: 040219.04

For: APPARATUS AND METHOD FOR DETERMINING EFFECTS OF A SUBSTANCE
ON AN ORGAN

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In reply to the March 9, 2007 Restriction Requirement, the period for reply being extended by the attached Petition for Extension of time, Applicants provisionally elect Group I, claims 1-15, drawn to a method of determining the effects of a substance on an organ, with traverse.

Applicants respectfully submit that the subject matter recited in the Group I claims is not "independent" of the subject matter recited in the Group II claims. The Office Action asserts that the methods are distinct from one another allegedly because they recite different and distinct steps which include different and distinct subjects. MPEP §806.06 states "[i]nventions as claimed are independent if there is no disclosed relationship between the inventions, that is, they are unconnected in design, operation, and effect."

Independent claim 1 (Group I) and independent claim 16 (Group II), however, both recite perfusing the at least one organ with a first medical fluid to preserve the at least one

organ; exposing the at least one organ to at least one test substance; and gathering data regarding at least one of the at least one organ, the at least one test substance, and interaction between the at least one organ and the at least one test substance.

Further, the Office Action asserts that the Groups of claims are distinct because claim 1 includes steps related to an organ for transplantation and claim 16 includes a step for determining whether an organ is unsuitable for transplantation. However, both Groups of claims are drawn to the application of a substance to an organ. Additionally, as indicated in the Office Action, both Group I and Group II are drawn to subject matter residing in the same class (435) and subclass (4+).

Accordingly, the subject matter of Groups I and II are related and connected in design, operation and effect.

It is also respectfully submitted that the subject matter of all claims 1-18 is sufficiently related that a thorough search for the subject matter of any one Group of claims would encompass a search for the subject matter of the remaining claims. Thus, it is respectfully submitted that the search and examination of the entire application could be made without serious burden. See MPEP §803 in which it is stated that "if the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions" (emphasis added). It is respectfully submitted that this policy should apply in the present application in order to avoid unnecessary delay and expense to Applicants and duplicative examination by the Patent Office.

Thus, withdrawal of the Restriction Requirement is respectfully requested.

Respectfully submitted,



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JAO:CJW/clf

Date: September 28, 2007

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